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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

Adv. Pro. No. 08-01789 (BRL)

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

SIPA LIQUIDATION

(Substantively Consolidated)

Defendant.
----- X

In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.
-----X

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

Adv. P. No.
10-04294 (BRL)

v.

DAVID T. WASHBURN

Defendant.
-----X

**DEFENDANT'S REPLY MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS COMPLAINT**

Preliminary Statement

David T. Washburn (the “Defendant”) by his undersigned attorneys, respectfully submits this reply memorandum of law in support of his motion to dismiss the Complaint filed by Irving H. Picard (the “Plaintiff” or “Trustee”), as Trustee for the liquidation of Bernard L. Madoff Investment Securities, LLC (“BLMIS,” “Madoff” or the “Debtor”).

Statement of the Current Posture of the Case

Nearly three years have passed since the Defendant submitted his motion to dismiss the Complaint. In the interim, among other things, Judge Rakoff withdrew the reference, held consolidated hearings, and issued several decisions that apply in this adversary proceeding. Most significantly, Judge Rakoff decided that 11 U.S.C. § 546(e) bars all of the Trustee’s avoiding power claims asserted in the Complaint other than actual fraudulent transfers under 11 U.S.C. § 548(a)(1)(A). *Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 476 B.R. 715, 722 (S.D.N.Y. 2012), *appeal pending*, No. 12-2557(L) (2d Cir.). The result is that Counts Two through Six of the Complaint have been dismissed. Unless the Second Circuit reverses, the only remaining claim in the Complaint is Count One (actual fraudulent transfers under the Bankruptcy Code).

On March 10, 2014, the Trustee and the Securities Investor Protection Corporation (“SIPC”) filed memoranda of law in opposition to various motions to dismiss, including the one made by the Defendants herein. These filings were omnibus submissions, identically filed in several adversary proceedings, including the instant one. Many of the arguments address points that the Defendants herein did not raise. One argument addressing a point that the Defendants did make – that to plead an actual

fraudulent transfer claim under New York law, fraudulent intent of the transferee must also be alleged – is moot in light of Judge Rakoff’s ruling concerning the applicability of section 546(e). This argument pertains to Count Three of the Complaint, which has been dismissed.

Since the Defendant had not sought dismissal of Count One (actual fraudulent transfer under the Bankruptcy Code), there are no remaining live issues under the Defendant’s motion to dismiss.

Conclusion

For all the foregoing reasons, the Defendant respectfully requests that the motion to dismiss be granted, and in particular that Counts Two, Three, Four, Five and Six be dismissed with prejudice, and that the Defendant be granted such other and further relief as is just.

Dated: New York, New York
March 17, 2014

Respectfully submitted,

**BECKER, GLYNN, MUFFLY, CHASSIN &
HOSINSKI LLP**

Attorneys for Defendant

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